Chan Thiam Teng v Ban Swee Heng Sdn Bhd

HIGH COURT (JOHORE BAHRU) — CIVIL SUIT NO 22-1 OF 1991
JAMES FOONG J
23 AUGUST 1992

Contract *— Sale and purchase of land — Specific performance — Validity of agreement — Whether agreement executed within ambit of board resolution — Transaction contravened Companies Act 1965 s 132C(1) — Purchaser/plaintiff had no notice of contravention — Effect thereof — Companies Act 1965 s 132C(1) & (3)*

Companies and Corporations *— Resolution — Binding effect — Resolution properly passed is binding until dissolved, cancelled or annulled — Actions taken within ambit of resolution is binding*

The plaintiff applied for summary judgment for specific performance of an agreement entered into between him and the defendants for the sale and purchase of a piece of land ('the property'). The chairman of the defendants granted an option and eventually entered into the agreement for the sale of the said property to the plaintiff for valuable consideration, pursuant to a resolution of the board of directors of the defendants. The defendants, however, returned the plaintiff's initial payment of 10% of the purchase price on two occasions alleging that: (a) the sale and purchase agreement was invalid because the director who executed it had no authority to do so; (b) the transaction contravened s 132C(1) of the Companies Act 1965 ('the Act') as no approval for the sale had been obtained in a general meeting of the defendants; and (c) the plaintiff was in breach of the agreement as he failed to pay the balance of the purchase price.

Held, allowing the plaintiff's application:

(1) The sale and purchase agreement was not invalid as the director who executed it acted within the ambit of a resolution of the defendants' board of directors passed on 15 March 1989.

(2) An option granted as specified in the resolution is binding on the defendants. When the option is acted upon by the grantee, as in this case, the option to purchase then automatically crystallizes into a full agreement to purchase which also binds the defendants.

(3) A resolution properly passed is binding on the defendants and until it is dissolved, cancelled or annulled, expressly or by implication, it binds the defendants on actions taken by its director who acted within the ambit of the resolution. There was no evidence that the resolution had lapsed by effluxion of time nor any evidence that it had been annulled.

(4) As no approval of the defendants in a general meeting had been obtained for the sale of the said property, s 132C(1) of the Act had been contravened but, from the evidence, the plaintiff had no notice of the contravention. Since the sale and purchase of the

said property is for valuable consideration, the transaction is valid under s 132C(3) of the Act. A

[**Bahasa Malaysia summary**

Plaintif telah memohon penghakiman terus untuk pelaksanaan spesifik suatu perjanjian yang diikat antara beliau dan defendan untuk penjualan dan pembelian sekeping tanah ('tanah itu'). Pengerusi defendan telah memberi suatu opsyen dan akhirnya mengikat suatu perjanjian untuk menjual tanah itu kepada plaintif dengan balasan yang bernilai, mengikut suatu resolusi lembaga pengarah defendan. Defendan, akan tetapi, telah dua kali mengembalikan pembayaran awal plaintif sebanyak 10% harga pembelian mengatakan bahawa: (a) perjanjian jual-beli itu adalah tidak sah kerana pengarah yang menyempurnakannya tidak berkuasa untuk berbuat demikian; (b) transaksi itu melanggar s 132C(1) Akta Syarikat 1965 ('Akta itu') kerana tiada kelulusan bagi penjualan itu telah diperolehi dalam suatu mesyuarat agung defendan; dan (c) plaintif memungkiri perjanjian itu kerana beliau gagal membayar baki harga pembelian itu. B C D

Diputuskan, membenarkan permohonan plaintif itu:

(1) Perjanjian jual-beli itu bukan tidak sah kerana pengarah yang menyempurnakannya telah bertindak dalam lingkungan resolusi lembaga pengarah defendan yang diluluskan pada 15 Mac 1989. E

(2) Suatu opsyen yang diberikan seperti yang ditetapkan dalam resolusi itu mengikat defendan. Apabila penerima pemberian itu bertindak berdasarkan opsyen itu, seperti di dalam kes ini, opsyen untuk membeli ketika itu secara automatik bertukar menjadi suatu perjanjian untuk membeli yang lengkap yang juga mengikat defendan. F

(3) Suatu resolusi yang diluluskan dengan betul mengikat defendan dan sehingga ia dibubarkan, dibatalkan atau dimansuhkan, secara nyata atau implikasi, ia mengikat defendan atas tindakan-tindakan yang diambil oleh pengarahnya yang telah bertindak dalam lingkungan resolusi itu. Tiada keterangan bahawa resolusi telah luput kerana perjalanan masa dan tiada juga sebarang keterangan bahawa ia telah dimansuhkan. G

(4) Kerana tiada kelulusan defendan dalam suatu mesyuarat agung telah diperolehi untuk penjualan tanah itu, s 132C(1) Akta itu telah dilanggar tetapi, daripada keterangan, plaintif tidak ada notis akan pelanggaran itu. Kerana penjualan dan pembelian tanah itu adalah dengan balasan yang bernilai, transaksi itu adalah sah di bawah s 132C(3) Akta itu.] H

Notes

For cases on specific performance of contracts for sale and purchase of land, see 3 *Mallal's Digest* (4th Ed) paras 1485–1488. I

Legislation referred to

Companies Act 1965 s 132C(1), (3)

A *Wong Kim Fatt* (*Gulam & Wong*) for the plaintiff.
Tia Chak Yit (*Tia & Noordin*) for the defendants.

James Foong J: This is an application by the plaintiff under O 81 of the Rules of the High Court 1980 against the defendants for specific performance of a sale and purchase agreement of a certain property entered into between the plaintiff and the defendants on 1 June 1990 (hereinafter referred to as 'the sale and purchase agreement').

The defendants' defence is based mainly on the following grounds:

(1) that the sale and purchase agreement is invalid for reason that the director who executed it has no authority to do so;
(2) that the transaction contravenes s 132C(1) of the Companies Act 1965 ('the Act') and the plaintiff had knowledge at the material time when the property was being sold that it formed a substantial asset of the defendants;
(3) that the plaintiff did not perform his part of the obligation under the sale and purchase agreement by failing to pay the balance of the purchase price.

After due consideration I came to the following findings. The sale and purchase agreement is not invalid. The director, one Koo Teng Shin @ Khoo Kim Lim, acted well within the ambit of a resolution of the board of directors of the defendants passed on 15 March 1989 relating to the sale of the said property. The relevant part of the resolution reads as follows:

> Authority to sell
>
> Following the above, it is resolved that the company do hereby sell the property inclusive of the approved plan at $220 per sq ft (ono) and that a commission of 1% be also approved for payment to the person who manages to secure a purchaser.
>
> Authority to issue option
>
> That the chairman be and is hereby authorized to grant options to interested parties.

This resolution was duly approved by the directors of the defendants and this fact is not disputed by the defendants. This resolution approved the sale of the said property at a certain price. It further gave the chairman of the defendants authority to grant options to interested parties who wished to purchase the property.

I do not agree with the defendants' contention that since the resolution only authorizes the chairman to grant options, he has no authority to enter into a contract for the sale and purchase of the said property. An option granted by the chairman as specified in the resolution is binding on the defendants. Consequently, if the option is exercised upon by the grantee, the sale and purchase of the said property will also bind the defendants. One cannot separate and distinguish the two acts for, when the option is acted upon by the grantee, which was so in this case, the option to purchase then automatically crystallizes into a full agreement to purchase.

The defendants also contended that the said resolution has lapsed due to effluxion of time. I find no authority from the defendants' counsel to support this point; neither was there any evidence whatsoever either expressly or by implication, that this resolution has been annulled. A resolution properly passed, which is so in this case, is binding on the defendants and until it is dissolved, cancelled or annulled, expressly or by implication, it binds the defendants on actions taken by its director who acted within the ambit of the resolution.

It is not disputed that no approval of the defendants in a general meeting for the sale of this said property was obtained. As such s 132C(1) of the Act has been contravened. However, from the evidence adduced by affidavits, I find that the plaintiff had no notice of this contravention and, since the sale and purchase of this said property is for valuable consideration, this transaction is valid under s 132C(3) of the Act.

The allegation by the defendants that the plaintiff had not fulfilled his obligation is totally unacceptable. It is clear from the letters that transpired between the plaintiff and the defendants' solicitors that it was the defendants who refused to recognize the sale and purchase agreement. In fact, they not only returned the initial sum of 10% of the purchase price but also declared the said sale and purchase 'invalid'. By maintaining such a stand and adopting such actions as returning the initial deposit on two occasions despite threats from the plaintiff's solicitors to sue for specific performance, the defendants look absolutely ridiculous to allege that the plaintiff had failed to perform his part of the bargain, thereby indirectly saying that the sale and purchase agreement is valid.

One last point which I would like to deal with is the allegation of the defendants that, since the common solicitors (M/s Susann Fang & Co) had written a letter requesting all directors of the defendants to attend their office 'to execute the necessary documentation' after the sale and purchase agreement was executed, this implied that the approval of the defendants for this sale had not been granted. I find this is a feeble attempt by the defendants to get out of this transaction when there is a binding contract upon them. Execution of 'necessary documentation' is an act that is required to be carried out by a vendor of a sale and purchase of landed property. The memorandum of transfer needs to be executed and so do relevant resolutions. This does not mean that the agreement for the sale and purchase of the said property has not been completed. They are subsequent acts and if such acts are not performed, the purchaser is entitled to specific performance on the sale and purchase agreement which at all material times stays valid and enforceable.

For reasons I have stated aforesaid, I allow the plaintiff's application for specific performance of the said sale and purchase agreement on the following amended and/or additional terms:

(1) the plaintiff do pay to the defendants or its solicitors within seven days from 19 August 1992 10% of the purchase price;
(2) that within 34 days from 19 August 1992 the plaintiff do pay to M/s Tia & Noordin, solicitors for the defendants in this suit, the balance of the purchase price of $1,035,000 on the said solicitors' undertaking:

A (a) to deliver to the plaintiff's solicitors, M/s Gulam & Wong, the duly executed memorandum of transfer of the said property and the duly executed adjudication forms within two weeks from the payment of the balance of the purchase price;

(b) to deliver to the plaintiff's said solicitors the duly executed discharge of charge, the document of title, the duplicate copy of the charge, all of which relate to the said property — Malay Grant No 1834 for Lot 460 Township of Johore Bahru — within 30 days from the date of payment of the balance of the purchase price, and for this purpose M/s Tia & Noordin can utilize the balance of the purchase price which is in their possession to redeem the said property and to obtain the relevant documents stated above from the chargee.

(3) M/s Tia & Noordin do retain from the balance of the purchase price an amount equivalent to 5% of the chargeable gain for payment of real property gains tax;

(4) the defendants shall deliver vacant possession of the said property to the plaintiff within 30 days from the date of payment of the balance of the purchase price;

(5) that the Registrar of Titles or the appropriate authority do register the discharge of charge and transfer of the said property into the name of the plaintiff, provided the aforesaid conditions are fulfilled;

(6) the balance of the purchase price (if any) after payment of all the aforesaid be paid to the defendants by M/s Tia & Noordin upon presentation to the relevant land office of all the aforesaid relevant documents for transfer in order to effect registration of the said property in the name of the plaintiff, free from all encumbrances;

(7) that damages for breach of contract of the sale and purchase of the said property be assessed and paid by the defendants to the plaintiff.

I also award that costs of this action be paid by the defendants to the plaintiff.

Plaintiff's application allowed.

Reported by Zarinah Marican